



\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14.08.2023

+ CM(M) 998/2022 & CM APPL. 41526/2022

RAM PAL SHARMA

..... Petitioner

Through: Mr. D.K. Singh, Advocate (Through
VC)

versus

BIJAY PAL SINGH YADAV

..... Respondent

Through: Ms. Savita Kasana, Advocate along
with Respondent in person

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 03.09.2022 passed by the District Judge, North-East District, Kardardooma Courts, Delhi in civil suit bearing no. 199/2021, titled as *Bijay Pal Singh Yadav v. Ram Pal Sharma* ('Trial Court') whereby the application filed by the Petitioner under Order VIII Rule 1 and 10 Civil Procedure Code, 1908 ('CPC') read with Section 148 and 151 CPC for condonation of delay in filing written statement was dismissed by the Trial Court.

2. This Court while issuing notice in this matter had passed the order dated on 20.09.2022 which reads as under: -

"3. This petition under Article 227 of the Constitution of India assails order dated 3rd September 2022 passed by the learned District Judge (Commercial Courts) (the learned Commercial Court) in CS 199/21 (Bijay Pal Singh Yadav v. Ram Pal Sharma), whereby the learned ADJ



has dismissed an application filed by the petitioner, as the defendant in the said suit, under Order VIII Rule 1 of the CPC, for condonation of delay in filing written statement.

4. Summons in the suit were served on the petitioner on 17th March 2022, and the matter was renotified for 21st March 2022. On 21st March 2022, written statement was directed to be filed by the defendant within the stipulated period, and the matter was adjourned to 8th July 2022. This, therefore, was the first opportunity for filing of written statement which was granted by the learned Trial Court.

5. On 7th July 2022, CS 199/21 was transferred to the Court of the learned District Judge (Commercial Courts), who has come to pass the impugned order dated 3rd September 2022. This transfer was effected in terms of Administrative Order dated 5th December 2019 issued by this Court, which allowed civil non-commercial suits to be listed before the learned Commercial Court where the number of matters before the learned Commercial Court were few.

6. On account of the aforesaid transfer, the petitioner submits that, though the written statement in response to the suit, was ready for filing on 8th July 2022, it could not be filed.

7. The written statement came to be filed on 3rd August 2022 along with an application under Order VIII Rule 1 and Rule 10 of the CPC, seeking condonation of the delay in filing the written statement.

8. The impugned order rejects the application.

9. In rejecting the application, the learned ADJ has also observed that the written statement was filed beyond the maximum condonable period under Order VIII Rule 1 of the CPC.

10. That the maximum period of 120 days envisaged by Order VIII Rule 1 of the CPC is not mandatory and that, if sufficient cause is made out, the Court can permit the written statement to be taken on record even beyond the said period is no longer *res integra*, as it stands settled by the judgments of the Supreme Court in **Kailash v. Nanku**¹ and **Rani Kusum v. Kanchan Devi**.

11. In view of the fact that the petitioner had presented the written statement for filing on 3rd August 2022, issue notice, returnable on 9th March 2023.

12. Notice be served on the respondent by all modes including dasti as well as through learned Counsel who appears on behalf of the respondent before the court below.

13. Reply, if any, be filed within four weeks, with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, before the next date of hearing.

14. Till the next date of hearing, further proceedings in CS 199/21 shall remain stayed.”

3. The learned counsel for the Respondent enters appearance. She states that since Respondent is the original plaintiff before the Trial court; and in



order to seek an expeditious disposal of the suit on merits, she has no objection if the order is set aside and written statement of the Petitioner is taken on record subject to Petitioner paying legal cost to the Respondent.

4. In response, learned counsel for the Petitioner states that he has no objection to the submission made by the counsel for the Respondent and is willing to pay costs as imposed by this Court.

5. This Court has considered the submissions of the parties and perused the record.

6. The Supreme Court recently in **Raj Process Equipments and Systems Pvt. Ltd. v. Honest Derivatives Pvt. Ltd.** 2022 SCC OnLine SC 1877 held that commercial suit which are initially instituted as ordinary suits and tried before the normal Civil Court, the relevant rule governing the filing of the written statement would be Order VIII Rule 1 CPC. The relevant portion of the judgment reads as under:

“9. There is no dispute about the fact that at the time when the suit was filed and at the time when the order dated 03.07.2018 was passed, the court before which the suit was pending was a normal Civil Court. It was only after the order dated 03.07.2018 was passed directing the matter to proceed ex-parte that the matter got transferred to a Commercial Court.

xxx xxx xxx

12. Reliance was placed by the High Court on the judgment of this Court in SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited (2019) 12 SCC 210, in support of the contention that the time-line prescribed under the second proviso to sub-rule (1) of Rule 1 of Order V CPC is mandatory and that the appellants have forfeited their right to file written statements.

13. But we do not agree. The suit that became the subject matter of dispute in SCG Contracts India Private Limited, appears to have been filed before the Commercial Court and not before the normal Civil Court. Insofar as the normal Civil Courts are concerned, it is the proviso to Order VIII Rule 1 CPC which applies. In Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344, this Court held that the proviso to Rule 1 of Order VIII CPC is directory and not mandatory. An exception was carved out in SCG Contracts India Private Limited to this Rule, by this Court insofar as the commercial disputes are concerned by invoking the second proviso to sub-rule (1) of Rule 1 of Order V.



Therefore, to apply the same principle to a matter where the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in Salem Advocate Bar Association, to the proviso to Order VIII Rule 1 CPC.

xxx

xxx

xxx

15. In fact the suit on hand is a suit for damages for the alleged loss suffered by the respondent, on account of the supply of defective machinery. Hence, we cannot deprive the appellants of an opportunity to contest the claim on merits.

16. Therefore, the appeal is allowed, the impugned order passed by the High Court and the order of the Commercial Court are set aside. The applications filed by the appellants are allowed and the Commercial Court is directed to take on record the written statements filed by the appellants and proceed with the hearing of the suit on merits. ”

(Emphasis supplied)

7. In this case as well, the suit was initially instituted in the normal Civil Court and summons were issued to the defendant by the said Court on 17.03.2022. The suit was thereafter, transferred to the concerned Commercial Court on 07.07.2022. In the interregnum, though the written statement was ready for filing, it could not be filed due to non-assignment of the matter to the concerned Court.

8. This Court takes note of the fact that though the written statement was filed beyond thirty (30) days period, as stipulated, however, as noted in the order dated 20.09.2022, the written statement was ready for filing on 08.07.2022 i.e., within the ninety (90) days extended period, as stipulated in Order VIII Rule 1 of CPC. Further, the Petitioner has also filed an application under Order VIII Rule 1 and Rule 10 of CPC seeking condonation of delay.

9. In view of the fact that the written statement already stands filed and the no objection given by the Respondent, this Court deems it fit to allow this petition, subject to the Petitioner making payment of costs of Rs. 20,000/- to the Respondent on or before 04.09.2023.

10. Accordingly, with the consent of the parties, the impugned order dated



03.09.2022 is set aside.

11. The written statement filed by the Petitioner on 03.08.2022 is directed to be taken on record.

11.1. Further, the Petitioner is directed to file his affidavit by way of admission/denial of documents filed with the plaint, within two (2) weeks. The Petitioner is further directed to file the documents in support of written statement within a period of two (2) weeks.

11.2. The Respondent is directed to file its replication and affidavit of admission/denial of documents filed by the defendant within a period of four (4) weeks after receipt of the affidavit and the documents by the Petitioner herein.

12. The learned counsel for the Petitioner undertakes before this Court that the Petitioner will remain duly represented before the Trial Court and not seek any adjournment before the Trial Court.

13. The said undertaking of the Petitioner is taken on record and he is bound down to the same, subject to the compliance of the payment of costs.

14. It is directed that if the Petitioner fails to comply with the directions issued at paragraph 10 and 10.1 in a time bound manner, his defense shall be struck off from the record and the right to file the written statement, affidavit of admission denial and documents same shall stand forfeited.

15. Accordingly, the petition is allowed, the order dated 03.09.2022 is set aside. The Petition is allowed in terms of the aforesaid direction.

16. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

August 14, 2023/hp

Click here to check corrigendum, if any